

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** April 1, 2005

**To:** The Commission  
(Meeting of April 7, 2005)

**From:** Delaney L. Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 107 (Simitian and Perata) Renewable energy**  
As Introduced February 22, 2005

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** Support in Concept

**SUMMARY:** This bill makes numerous changes to existing statute establishing the Renewables Portfolio Standard (RPS) Program. Major changes include: advancing the date for achieving 20% renewable generation from 2017 to 2010; establishing a system of Tradable Renewable Energy Certificates (TRECs) as a means of RPS compliance (effectively, the purchasing of the social benefits of renewable energy without purchasing the energy itself); requiring municipal utilities to report progress towards RPS goals to the Energy Commission; and mandate disclosure of certain aspects of RPS contracting within six months of Commission contract approval.

**DIGEST:** Existing law, (the Public Utilities Act), requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.

This bill would instead require that each retail seller increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

This bill would require the Commission to establish rules authorizing electrical corporations to meet the renewables portfolio standard requirements using renewable energy credits. The bill would require the rules to prohibit an electrical corporation from

selling renewable energy credits associated with eligible renewable energy resources included in the corporation's baseline quantity on January 1, 2004.

This bill would require that the funds collected through the renewable energy public goods charge be awarded only to a project that is selected by an electrical corporation pursuant to a competitive solicitation procedure found by the Commission to comply with the RPS Program and that the project participant has entered into an electricity purchase agreement resulting from that solicitation that is approved by the Commission.

**DIVISION ANALYSIS (DSP):** The bill would require the Commission to produce annual Legislative reports describing “actions it has taken to fast-track completion of proceedings related to the addition or modification of electric transmission needed to access renewable energy resources.” (Pub.Util.Code 399.11(e)).

The bill accelerates the RPS goal of 20% renewable generation from 2017 to 2010, and makes that deadline applicable to IOUs, ESPs and CCAs. While this provision ensures competitive equality across LSEs, it is not clear if ESPs and CCAs will be in a position to achieve the 2010 target, given present portfolios and limited planning at this time.

The bill adds provisions regarding the use of Public Goods Charge (PGC) funds by ESPs and CCAs. Presently, IOU and ESP customers pay into the PGC fund to support the above-market costs of renewable energy development. This bill establishes a Commission procedure whereby ESP (and ultimately CCA) renewable procurement would be evaluated for consistency with RPS rules and goals, and PGC funds allocated to support ESP and CCA renewable energy contracts.

The bill specifies that no PGC funds shall be utilized to support the purchase of TRECs; PGC funds are reserved for long-term contracts for renewable energy generation.

The bill eliminates a portion of the Energy Commission Renewable Energy Program, which presently is authorized to allocate 10% of its annual funds to support the purchase of renewable energy by ESP customers.

Municipal utilities are required to report to the CEC regarding the status of their RPS program development, but the bill does not require that they increase procurement by at least 1% per year, or reach 20% renewable generation by a specific point.

The CEC is charged with monitoring TRECs and defining eligibility for TREC transactions, in consultation with the CPUC, and in recognition of adopted Commission determinations regarding the renewable energy attributes to be encompassed in the credit. The CEC is to coordinate with the WECC regarding this effort. The bill appears to require that eligible TRECs be associated with power delivered into California, ensuring that the RPS program continues to produce useful energy. In this important respect, and in light of the lack of clarity both here and in AB 1585 regarding this point,

this bill presents a superior position regarding TREC eligibility. Further investigation of this issue is recommended.

The CEC will not certify TRECs associated with generation under contract prior to January 1, 2005. This generation will be tracked separately by the CEC, and included in the calculation of each obligated entity's renewable generation baseline.

Similarly, no TRECs will be issued by the CEC for PURPA contracts entered in to after January 1, 2005. Effectively, renewable generators will need to choose an RPS contract instead, if TRECs are to be included in the transaction. This is an issue of ongoing Commission litigation at FERC and elsewhere; the Commission's position here should be coordinated with Legal Division.

The bill establishes procedures for allowing generators to sell electricity to municipal utilities and sell their TRECs separately, i.e. to IOUs, ESPs, or CCAs.

The bill stipulates that certain non-price RPS contract details (party names, resource type, projection location, and project capacity) be made public within six months of Commission approval of a contract.

The bill grants the Commission explicit authority to levy penalties against ESPs and CCAs that fail to meet RPS procurement targets (Pub. Util. Code 399.14(d))

Proposed Pub. Util. Code 399.14(f) as drafted reads: "'Procure" means that a retail seller may acquire the electricity generated by an eligible renewable energy resource." Recommend striking "may," as it suggests that simply having an *option* to purchase renewable energy will exhaust the procurement responsibility. The goal should be to ensure the purchase of renewable energy.

The Commission is directed to establish baselines and procurement targets for ESPs and CCAs in order to ensure that customer migration does not result in a decrease in the total amount of renewable energy generation in use in California.

The bill specifies that any revenue associated with the sale of TRECs be credited to ratepayers. This may have the effect of limiting IOU interest in pursuing maximum amounts of renewable energy development within their service territories.

The bill prohibits IOU sales of TRECs in years in which they have not satisfied their annual RPS procurement requirements.

Electrical corporations and municipal utilities are required to adopt a long-term procurement plan that embraces the Loading Order of preferred resources.

The CEC is directed to prepare a report by January 1, 2007 describing options for "incentivizing" municipal utility progress towards the RPS goals.

## **LEGISLATIVE HISTORY:**

SB 1078 and SB 1038 (Stats. 2002) established the RPS program. SB 1478 (Stats. 2004) would have established a TREC system, but was vetoed by the Governor.

## **STATUS:**

Set for hearing in the Senate Energy, Utilities & Communications Committee on April 5, 2005.

## **SUPPORT/OPPOSITION**

Support: None on file.

Opposition: None on file.

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**Date:** April 1, 2005

**BILL LANGUAGE:**

BILL NUMBER: SB 107      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senators Simitian and Perata

JANUARY 20, 2005

An act to amend Sections 25740, 25743, and 25744 of, and to repeal Sections 25745 and 25749 of, the Public Resources Code, and to amend Sections 387, 399.11, 399.12, 399.13, 399.14, 399.15, and 399.16 of, to add Section 399.17 to, and to add Article 9 (commencing with Section 635) to Chapter 3 of Part 1 of Division 1 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 107, as introduced, Simitian. Renewable energy.

(1) Existing law expresses the intent of the Legislature, in establishing the Renewable Energy Resources Program, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California per year by 2006.

This bill would revise and recast that intent language so that the amount of electricity generated per year from renewable energy resources is increased to an amount that equals at least 20% of the total electricity sold to retail customers in California per year by December 31, 2010. The bill would make conforming changes related to this provision.

(2) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission (CPUC) with respect to the purchase of electricity and requires the CPUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.

This bill would instead require that each retail seller, as defined, increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

(3) Existing law requires the State Energy Resources Conservation

and Development Commission (Energy Commission) to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

This bill would require the Energy Commission to establish a renewable energy credit, as defined, trading program and to develop tracking, accounting, verification, and enforcement mechanisms for the program. The bill would prohibit the Energy Commission from certifying or awarding tradeable renewable energy credits for electricity generated pursuant to any electricity purchase contract with a retail seller executed before January 1, 2005, that does not contain explicit terms and conditions specifying the ownership or disposition of those credits. The bill would prohibit the Energy Commission from certifying or awarding tradeable renewable energy credits for electricity generated pursuant to any purchase contract executed after January 1, 2005, pursuant to a prescribed federal act. The bill would provide for the tracking of deliveries under these purchase contracts through a prescribed accounting system. The bill would additionally require the Energy Commission to require any retail seller of electricity that does not meet the requirements of the renewables portfolio standard by directly owning or purchasing electricity generated from eligible renewable energy resources, to purchase renewable energy credits for a quantity of electricity produced from eligible renewable energy resources, that is sufficient to make up the shortfall. The bill would require the CPUC to establish rules authorizing electrical corporations to meet the renewables portfolio standard requirements using renewable energy credits. The bill would require the rules to prohibit an electrical corporation from selling renewable energy credits associated with eligible renewable energy resources included in the corporation's baseline quantity on January 1, 2004. The bill would require the Energy Commission to certify, and would specify criteria for, the eligibility of renewable energy credits associated with electricity delivered to a local publicly owned electric utility by an eligible renewable energy resource, for purposes of compliance with the renewables portfolio standard by a retail seller. The bill would make other technical and conforming changes.

(4) Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable energy resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to annually report certain information relative to renewable energy resources to its customers.

This bill would additionally require that the governing board of a local publicly owned electric utility annually report the utility's status in implementing a renewables portfolio standard and progress toward attaining the standard to its customers and to report to the Energy Commission the information that the governing board is required to annually report to their customers. These additional reporting requirements would thereby impose a state-mandated local program. The bill would require the Energy Commission to report to the Governor and Legislature no later than January 1, 2007, with recommendations for how to incentivize each local publicly owned electric utility to implement and enforce a renewables portfolio standard program consistent with the renewables portfolio standard

program requirements applicable to a retail seller of electricity.

(5) Under the Public Utilities Act, the CPUC requires electrical corporations to identify a separate rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources (renewable energy public goods charge). Under existing law, 51.5% of the money collected as part of the renewable energy public goods charge is required to be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide. Existing law also provides that any of those funds used for new in-state renewable electricity generation facilities are required to be expended in accordance with a specified report of the Energy Commission to the Legislature, subject to certain requirements, including the awarding of supplemental energy payments.

This bill would require that these funds be awarded only to a project that is selected by an electrical corporation pursuant to a competitive solicitation procedure found by the CPUC to comply with the Renewables Portfolio Standard Program and that the project participant has entered into an electricity purchase agreement resulting from that solicitation that is approved by the CPUC. The bill would authorize certain projects to receive supplemental energy payments under certain circumstances. The bill would revise existing criteria for Energy Commission consideration of an out-of-state electrical generation facility as an eligible renewable energy resource.

(6) Existing law requires that 17.5% of the money collected under the renewable energy public goods charge be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications, and that certain funds be expended in accordance with the above-described report, subject to, among other things, the requirement that funding for emerging technologies be provided through a competitive, market-based process.

This bill would make technical and nonsubstantive changes to these provisions.

(7) Existing law requires that 10% of the money collected under the renewable energy public goods charge be used for customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

This bill would delete this provision.

(8) Existing law requires the use of standard terms and conditions by all electrical corporations in contracting for eligible renewable energy resources.

This bill would require that those terms and conditions include the requirement that, no later than 6 months after the CPUC's approval of an electricity purchase agreement, the following information about the agreement be disclosed by the CPUC: party names, resource type, project location, and project capacity.

(9) This bill would require an electrical corporation or local publicly owned electric utility to adopt certain strategies in a long-term plan or a procurement plan, as applicable, to achieve efficiency in the use of fossil fuels and to address carbon

emissions, as specified.

(10) This bill would delete certain obsolete and duplicative provisions and make technical and conforming changes.

(11) Existing law makes a violation of the Public Utilities Act or a violation of an order of the CPUC a crime.

Because a violation of the provisions of the bill or of any CPUC order implementing these provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25740 of the Public Resources Code is amended to read:

25740. It is the intent of the Legislature in establishing this program, to increase the amount of ~~renewable~~ electricity generated *from renewable energy resources* per year, so that it equals at least ~~17~~ 20 percent of ~~the total electricity generated for consumption~~ *total retail sales of electricity* in California per year by ~~2006~~ December 31, 2010 .

SEC. 2. Section 25743 of the Public Resources Code is amended to read:

25743. (a) Fifty-one and one-half percent of the money collected pursuant to the renewable energy public goods charge ~~—~~ shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.(b) Any funds used for new in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) In order to cover the above market costs of *eligible* renewable energy resources as approved by the Public Utilities Commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, the commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(A) The commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The commission may waive application of the caps to accommodate



a facility— if it is demonstrated to the satisfaction of the commission — that operation of the facility would provide substantial economic and environmental benefits to end-use customers subject to the funding requirements of the renewable energy public goods charge.

(B) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(C) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for ~~the lesser of 10 years, or~~

*no longer than 10 years, but shall, subject to the payment caps in subparagraph (A), be equal to the cumulative above-market costs relative to the applicable market price referent at the time of initial contracting, over the duration of the contract with the electrical corporation.*

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(E) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

(F) *A project may receive funds pursuant to this section only if it is selected by an electrical corporation pursuant to a competitive solicitation that is found by the Public Utilities Commission to comply with the California Renewables Portfolio Standard Program under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, and that has entered into an electricity purchase agreement resulting from that solicitation, that is approved by the Public Utilities Commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments if the retail seller demonstrates to the Public Utilities Commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers. The commission may not award supplemental energy payments for the sale or purchase of renewable energy credits.*

(2) The commission may determine as part of a solicitation, that a facility that does not meet the definition of an "in-state renewable electricity generation technology" facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets all of the following requirements:

(A) It ~~is located so that it~~ is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(B) ~~It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision commences initial commercial operation after January~~

1, 200 5 .

(C) *It has a contract with a retail seller or another entity to*

*supply electricity to end-use customers subject to the renewable energy public goods charge for a period of time at least equal to the duration of incentive payments provided pursuant to this subdivision.*

*(D) It demonstrates delivery of the electricity under contract to the retail seller serving end-use customers subject to the renewable energy public goods charge.*

~~—(C)—~~

*(E) It will not cause or contribute to any violation of a California environmental quality standard or requirement.*

~~—(D)—~~

*(F) If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.*

~~—(E)—~~

*(G) It meets any other condition established by the commission.*

(3) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(A) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6 of the Public Utilities Code.

(B) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(C) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code.

(D) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(E) Is a solid waste conversion facility, unless the facility meets the criteria established in paragraph (3) of subdivision (a) of Section 25741 and the facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000), has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

(4) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of the renewable energy public goods charge.

(5) The commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(6) In awarding funding, the commission may provide preference to projects that provide tangible demonstrable benefits to communities

with a plurality of minority or low-income populations.

(c) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(d) Facilities engaging in the direct combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(e) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(f) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to the following:

(1) Agricultural crops and agricultural wastes and residues.

(2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(3) Wood and wood wastes that meet all of the following requirements:

(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with ~~Sec.~~ Section 4511) of Part 2 of Division 4).

(B) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(C) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

SEC. 3. Section 25744 of the Public Resources Code is amended to read:

25744. (a) Seventeen and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. (b) Any funds used for emerging technologies pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that ~~shall be~~

~~is~~ is in place for a period of not less than five years, and ~~shall be~~ is structured ~~so as~~

to allow eligible emerging technology manufacturers and

suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to ~~subparagraph (C)~~ paragraph (3), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatt hours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission.

(3) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) The commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including ~~but not limited to,~~ shading, insulation levels, and installation orientation.

(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.

(c) Notwithstanding Section 399.6 of the Public Utilities Code, the commission may expend, until December 31, 2008, up to sixty

million dollars (\$60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of Section 25751.

SEC. 4. Section 25745 of the Public Resources Code is repealed.

~~25745. (a) Ten percent of the money collected pursuant to the renewable energy public goods charge shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in state renewable electricity generating facilities. (b) Any funds used for customer credits pursuant to this section shall be expended, as provided in the report, subject to all of the following requirements:~~

~~(1) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to the renewable energy public goods charge that is contributing funds to support programs under this chapter, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.~~

~~(2) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's bills. Credits may not exceed one and one half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars (\$1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.~~

~~(3) The commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.~~

~~(4) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.~~

~~(5) The Public Utilities Commission shall notify the commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25 of the Public Utilities Code.~~

SEC. 5. Section 25749 of the Public Resources Code is repealed.

~~25749. The commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The commission shall consult with the Public~~

~~Utilities Commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.~~

SEC. 6. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. (b) Each local publicly owned electric utility shall report, on an annual basis, to its customers *and to the State Energy Resources Conservation and Development Commission*, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels considered eligible renewable energy resources as defined by Section 399.12.

*(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.*

SEC. 7. Section 399.11 of the Public Utilities Code is amended to read:

399.11. The Legislature finds and declares all of the following:

(a) In order to attain a target of *generating 20 percent of total retail sales of electricity in California from renewable energy* ~~for the State of California~~ *resources by December 31, 2010,* and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of renewable energy resources *and the delivery of the electricity generated by those resources to customers in California* may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts *and by reducing in-state fossil fuel extraction*.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy *Resources* Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to ~~Sections 383.5 and 445~~ *Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code*.

(e) *New and modified electric transmission facilities may be*

necessary to facilitate the state achieving its renewables portfolio standard targets. In order to attain a target of generating 20 percent of total retail sales of electricity in California from renewable energy resources by December 31, 2010, the state must expedite regulatory proceedings related to the addition or modification of electric transmission by fast-tracking the processing of transmission permit requests needed to facilitate the development or delivery of renewable generation. It is the intent of the Legislature that the commission report to the Legislature annually, consistent with its reporting obligations under Section 1701.6, the actions it has taken to fast-track completion of proceedings related to the addition or modification of electric transmission needed to access renewable energy resources, and the results of those actions.

SEC. 8. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:(a) ~~—(1) —~~  
"Eligible renewable energy resource" means an electric generating facility that ~~is one of the following~~ meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations :

~~—(1) The facility meets the definition of "in-state renewable electricity generation technology" in Section 383.5.—~~

~~—(2) —~~

(1) ) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for ~~output~~ electricity certified as incremental geothermal production by the Energy Commission, provided that the incremental ~~output~~ electricity was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining geothermal output of existing steamfields and the contribution of capital investments in the facility or wellfield. This paragraph shall remain operative only until January 1, 2010.

~~—(3) —~~

(2) (A) An existing small hydroelectric generation facility of 30 megawatts or less ~~procured or owned by an electrical corporation as of the date of enactment of this article~~ shall be eligible only if a retail seller owned or procured the electricity from the facility as of December 31, 2003, and that electricity shall be eligible only for purposes of establishing the baseline ~~of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15~~ . A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(B) Notwithstanding subparagraph (A), an existing conduit

hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be eligible for the purposes of

satisfying a retail seller's baseline quantity of eligible renewable energy resources. A new conduit hydroelectric facility, as defined by Section 823a of Title 16 of the United States Code, of 30 megawatts or less, shall be an eligible renewable energy resource so long as it does not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

~~—(4)—~~

(3) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. ~~Output from such facilities~~ Electricity generated by a facility meeting these requirements shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(4) Notwithstanding paragraph (1), any geothermal electricity included in the baseline of a retail seller from a facility under a long-term contract executed before January 1, 2004, shall be eligible to satisfy the annual procurement targets of any retail seller upon the expiration of that contract.

(b) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

~~—(b)—~~

(c) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing on this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or



producing ~~power~~ electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned ~~electrical~~ electric utility as defined in subdivision (d) of Section 9604.

~~—(e)—~~

(d) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to Sections 399.13 and 399.15.

(e) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated by an eligible renewable energy resource and delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility subject to the requirements of subdivision (e) of Section 399.13. The Energy Commission shall ensure that the renewable energy credit includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, and shall rely on the definition of "renewable energy credit" adopted as a standard term by the commission. Any electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity, as determined by the Energy Commission, shall not result in the creation of any renewable energy credits.

SEC. 9. Section 399.13 of the Public Utilities Code is amended to read:

399.13. The Energy Commission shall do all of the following: (a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy

~~output~~ resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, ~~and for verifying~~ to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Establish a system for tracking and verifying renewable energy credits. The Energy Commission shall consult with other states in the Western Electricity Coordinating Council transmission system to develop consistent mechanisms and protocols for verifying renewable energy credits and to prevent double counting of the electricity generated from any eligible renewable energy resource.

(d) Allocate and award supplemental energy payments pursuant to ~~Section 383.5~~ Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy. A project may receive supplemental energy payments only if it is selected by an electrical corporation pursuant to a competitive solicitation that is found by the commission to comply with the California Renewables Portfolio Standard Program under this article and that has entered into an electricity purchase agreement resulting from that solicitation that is approved by the commission. A project selected for an electricity purchase agreement by another retail seller may receive supplemental energy payments if the retail seller demonstrates to the commission that the selection of the project is consistent with the results of a least-cost and best-fit process, and that the supplemental energy payments are reasonable in comparison to those paid under similar contracts with other retail sellers. The Energy Commission shall not award supplemental energy payments for the sale or purchase of renewable energy credits.

(e) Certify, for purposes of compliance with the renewables portfolio standard by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility if the Energy Commission determines that the following conditions have been satisfied:

(1) The local publicly owned electric utility procuring the electricity complies with the requirements of this article.

(2) The local publicly owned electric utility has established annual procurement targets comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.

(f) The Energy Commission shall not certify or award tradeable renewable energy credits for electricity generated pursuant to any electricity purchase contract with a retail seller executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(g) The Energy Commission shall not certify or award tradeable renewable energy credits for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) and count towards the renewables portfolio standard obligations of the purchasing retail seller.

SEC. 10. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) The commission shall direct each electrical

corporation to prepare a renewable energy procurement ~~plans~~ plan as described in paragraph

(3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) (A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies.

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness. This provision shall not apply before April 1, 2004, for any electrical corporation that on June 30, 2003, is in federal court under Chapter 11 of the federal ~~bankruptcy law~~ Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) .

(B) Within 90 days of the commission's determination as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) ~~Not later than six months after the effective date of this section, the~~ The commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for *electricity generated by eligible renewable energy resources* , and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit *eligible renewable energy resources* to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance , including ~~, but not limited to,~~ both of the following:

(i) Rules permitting electrical corporations to apply excess procurement in one year to subsequent

years or inadequate procurement in one year to no more than the following three years.

*(ii) Rules permitting electrical corporations to purchase renewable energy credits from an eligible renewable energy resource pursuant to a contract of at least 10 years duration, under the condition that the electricity generated by the eligible renewable energy resource is sold into the California electricity market and no feasible or cost-effective transmission facilities exist to deliver the electricity to the electrical corporation's service territory.*

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators. *A contract for the purchase of electricity generated by an eligible renewable energy resource shall include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.*

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include ~~—, but is not limited to,—~~ all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration. *Any bid solicitation or contract of less than 10 years in duration shall be considered nonconforming.*

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable energy procurement plan ~~—90 days—~~ prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate ~~—such~~

the contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. *The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.*

(e) Upon application by ~~an electrical corporation~~ a retail seller, the commission may authorize ~~another~~ a procurement entity to enter into contracts on behalf of customers of the ~~electrical corporation~~ retail seller for deliveries of eligible renewable energy resources to satisfy the annual renewables portfolio standard obligations, subject to similar terms and conditions applicable to ~~an electrical corporation~~ a retail seller. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, "procure" means that a ~~utility~~ retail seller may acquire the ~~renewable output of electric generation facilities~~ electricity generated by an eligible renewable energy resource that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Section ~~383.5~~ 25742 or 25743 of the Public Resources Code, including ~~—, but not limited to,~~ work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 11. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of ~~output from~~ electricity generated by

eligible renewable energy resources, or an equivalent quantity of renewable energy credits, as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and ~~Sections 399.6 and 383.5~~ Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables ~~—, and subject to all of the following:—~~. ~~(1) An electric~~

~~corporation shall not be required to enter into long term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.~~

~~—(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Section 383.5,, consistent with this article, for above market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.~~

~~—(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.~~

~~(b) The commission shall implement annual procurement targets for each electrical corporation retail seller as follows:~~

~~(1) Beginning on January 1, 2003, each electrical corporation retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year 2010 .~~

~~(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12. The Commission shall establish baselines and set annual procurement targets for other retail sellers that ensure that the departure of customer loads from bundled service by an electrical corporation do not cause any reduction in the quantity of eligible renewable energy resources that would have otherwise been procured by the electrical corporation to serve those customers.~~

~~(3) Only for purposes of establishing these targets, the commission shall include all power electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.~~

~~—(3)—~~

~~(4) In the event that an electrical corporation a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation retail seller shall procure additional eligible renewable~~

energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2)

~~, and Sections 399.6 and 383.5 of subdivision~~

~~(a), Section 399.6, and Chapter 8.6 (commencing with Section 25740)~~

~~of Division 15 of the Public Resources Code, to cover the~~

~~above-market costs of eligible ~~renewables~~~~

~~renewable energy resources .~~

~~—(4)—~~

(5) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow

~~an electrical corporation~~ a retail seller

to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c).

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available ~~output~~ electricity .

(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for above-market costs.

Indirect costs associated with the purchase of eligible renewable energy resources by an electrical corporation, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, shall not be eligible for supplemental energy payments, but are recoverable in rates, as authorized by the commission.

(e) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

~~—(e)—~~

(f) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

(g) The commission shall establish rules that authorize the use of renewable energy credits to satisfy annual procurement targets. At a minimum, the rules shall do all of the following:

(1) Prohibit a renewable energy credit from being counted more than once by any retail seller for compliance with the renewables

portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(2) Ensure that any revenues received by an electrical corporation for the sale of renewable energy credits are credited to ratepayers.

(3) Limit the quantity of renewable energy credits that can be procured unbundled from electricity generation to meet the annual procurement targets of a retail seller.

(4) Require every retail seller to demonstrate that all purchased renewable energy credits are certified by the Energy Commission and comply with the requirements of this article.

(5) Ensure that no retail seller shall be obligated to procure renewable energy credits to satisfy annual procurement targets in the event that supplemental energy payments, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of long-term contracts with eligible renewable energy resources.

(6) Prohibit an electrical corporation from selling renewable energy credits associated with eligible renewable energy resources included in that electrical corporation's baseline quantity on January 1, 2004.

(7) Prohibit sales of renewable energy credits by an electrical corporation during any year in which the electrical corporation utilizes flexible compliance rules to permit inadequate procurement pursuant to subparagraph (C) of paragraph (2) of subdivision (a) of Section 399.14.

SEC. 12. Section 399.16 of the Public Utilities Code is amended to read:

399.16. The ~~commission~~ Energy Commission may consider an electric generating facility that is located outside the state to be an eligible renewable energy resource if ~~it~~ the facility meets the criteria described in Section 399.12 and all of the following requirements: (a) It is ~~located so that it is, or will be,~~ connected to the Western Electricity Coordinating Council (WECC) transmission system.

(b) It ~~is developed with guaranteed contracts to sell its generation~~ commences initial commercial operation after January 1, 2006, supplies electricity under a guaranteed contract with a retail seller, and demonstrates delivery of ~~energy, to a~~ the contracted amount of electricity to that retail seller ~~or the Independent System Operator~~.

(c) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the ~~State~~ Energy Resources Conservation and Development Commission pursuant to subdivision (b) of Section 399.13.

SEC. 13. Section 399.17 is added to the Public Utilities Code, to read:

399.17. (a) Subject to the provisions of this section, the requirements of this article apply to an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California.

(b) For an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to



the Western Electricity Coordinating Council (WECC) transmission system, provided all of the following conditions are met:

(1) The electricity generated by the facility is procured by the electrical corporation on behalf of its California customers, and is not used to fulfill renewable energy procurement requirements in other states.

(2) The electrical corporation participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.13.

(3) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the annual procurement targets of this article.

(c) The commission shall determine the annual procurement targets for an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, as a specified percentage of total kilowatthours sold by the electrical corporation to its retail end-use customers in California in a calendar year.

(d) An electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, may use an integrated resource plan prepared in compliance with the requirements of another state utility regulatory commission, to fulfill the requirement to prepare a renewable energy procurement plan pursuant to this article, provided the plan meets the requirements of Sections 399.11, 399.12, 399.13, and 399.14, as modified by this section.

(e) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates of the electrical corporation's California customers, provided the costs are not recoverable in rates in other states served by the electrical corporation.

SEC. 14. Article 9 (commencing with Section 635) is added to Chapter 3 of Part 1 of Division 1 of the Public Utilities Code , to read:

#### Article 9. Long-Term Plans and Procurement Plans

635. In a long-term plan adopted by an electrical corporation or in a procurement plan implemented by a local publicly owned electric utility, the electrical corporation or local publicly owned electric utility shall adopt a strategy applicable both to newly constructed or repowered generation owned and procured by the electrical corporation or local publicly owned electric utility to achieve efficiency in the use of fossil fuels and to address carbon emissions consistent with the loading order approved by the commission, or for a local publicly owned electric utility, a functionally equivalent order by its governing body, the State Energy Resources Conservation and Development Commission, and the California Consumer Power and Conservation Financing Authority.

SEC. 15. The State Energy Resources Conservation and Development Commission shall, on or before January 1, 2007, report to the Governor and the Legislature with recommendations for how to incentivize each local publicly owned electric utility, as defined in Section 9604 of the Public Utilities Code, to implement and enforce

a renewables portfolio standard program meeting the requirements of Section 399.15 of the Public Utilities Code, utilizing eligible renewable energy resources, as defined in Section 399.12. The commission may include the report as a component of the 2005 Integrated Energy Policy or the next renewable energy report required pursuant to Section 25758 of the Public Resources Code. The commission shall use existing resources to comply with this section.

SEC. 16.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.